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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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13

DATE MAILED:

DEC 11 1999

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 3/2/99

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire _____ month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-52 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-52 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
- ☐ Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Art Unit: 1643

DETAILED ACTION

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1643, Examiner **Mary K Zeman**.

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-5, 13-41 and 43-48, drawn to methods and vaccines for inducing a response to an antigen, classified in class 424, subclass 192.1.
 - II. Claims 49-52, drawn to methods and vaccines for suppressing a response to an allergen, classified in class 424, subclass 184.1.
 - III. Claims 6-12 and 42, drawn to DNA vaccines, classified in class 514, subclass 44 and class 536, subclass 23.1.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are separate and distinct as they are differing products intended to have differing effects on the immune system. Invention I is intended to provoke a response to a particular antigen, such as influenza, a viral disease, while Invention II is intended to suppress an immune response to allergens. These mechanisms are different and have differing target patient populations.

Art Unit: 1643

Inventions (I and II) and III are separate and distinct as Invention III is a separate and distinct product, a polynucleotide vaccine, which works through different methods in vivo. A peptide vaccine and a DNA vaccine are completely different in chemical structure and function. A search for the peptide vaccine does not necessarily illuminate a DNA vaccine, and vice versa.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. **Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-305-3704. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this

Art Unit: 1643

Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service.

Please limit the use of this dedicated Fax number to responses to Written Restrictions.

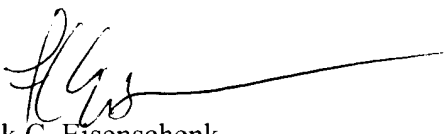
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary K Zeman whose telephone number is (703) 305-7133. The examiner can be reached between the hours of 7:30 am and 5:00 pm Monday through Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Eisenschenk, can be reached on (703) 308-0452.

The fax number for this Art Unit is (703) 305-7401.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

mkz
May 20, 1999


Frank C. Eisenschenk
Supervisory Patent Examiner, Group 1600